Supreme Court, U.S.
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No. _____

In the
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

Blueprint Engines, Inc., *Petitioner-Defendant*,
v.
Jadair Incorporated, *Plaintiff-Respondent*, and
United States Fire Insurance Company, *Defendant-Respondent*,
Mesirow Insurance Services, Inc., West Bend Air, Inc., Stanley Aircraft & Engine Service, Inc., Employers Reinsurance Corporation, *Defendants*.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Wisconsin

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PETITION FOR WRIT OF CERTIORARI

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35 pp

QUESTIONS PRESENTED

Whether the Due Process guarantee of the Fourteenth amendment of the United States Constitution bars enforcement of Wisconsin statutory provisions and/or common law rules that refuse to open their appellate courts' doors, to resolve on its merits, the timely and otherwise proper appeal by an Illinois corporation from an adverse summary judgment entered at the trial court level, merely because its one page Notice of Appeal had been signed by an officer-owner-director of the Illinois corporation, rather than by an attorney, without even inquiring whether or *not* that corporation had sufficient funds available to be able to hire an attorney to sign such a Notice of Appeal within the requisite 45 days time period to appeal, and even though a Wisconsin attorney specially appeared on its behalf about a week after the motion to dismiss the appeal had been filed, but after the aforesaid 45 days had elapsed?

Whether the aforesaid closing of "access" to the Wisconsin appellate court system was in violation of the Equal Protection of the Laws guarantee of the Fourteenth Amendment because all human beings (natural persons) have an *absolute* right to have his or her Notice of Appeal given full legal effect, even though *not* signed by an attorney?

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Mesirow Insurance Services, Inc., West Bend Air, Inc., Stanley Aircraft & Engine Service, Inc., Employers Reinsurance Corporation, *Defendants*.

PETITION FOR WRIT OF CERTIORARI

Petitioner Blueprint Engines, Inc., by its attorney, respectfully petitions this Court to issue a writ of certiorari to review the Decision of the Wisconsin Supreme Court in this case. (See App., tab A)

OPINIONS BELOW

The Decision of the Wisconsin Supreme Court eventually will be reported in _____ Wis.2d _____ and in _____ N.W.2d _____, but to date has not been.

The opinion of Court of Appeals II (see tab B) will not be reported.

JURISDICTION

Jurisdiction over this case is provided by 28 U.S.C. 1257 and Rule 10(b)(c), Rules of the Supreme Court of the United States. The Decision of the Wisconsin Supreme Court to be reviewed was filed on April 29, 1997.

UNITED STATES CONSTITUTIONAL PROVISIONS INVOLVED

Article XIV of the Amendments to the United States Constitution provides that "(n)o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT

A. Proceedings at the Circuit (Trial) Court Level

This Wisconsin case initially involved claims by plaintiff Jadair Incorporated ("Jadair") against the

Illinois corporation that overhauled one of its airplane's engines, defendant Blueprint Engines, Inc. ("Blueprint"); Blueprint's insurance company, defendant-respondent United States Fire Insurance Company ("U.S. Fire Ins."); the insurance agency which arranged for Blueprint's insurance coverage, defendant Mesirow Insurance Services, Inc. ("Mesirow"), and its insurance company; and two other Wisconsin companies that had worked on the installation of the overhauled engine in the airplane. Blueprint was initially represented by two Illinois attorneys in the Wisconsin trial court, but they both withdrew for financial reasons on December 5, 1994. Thereafter, Blueprint participated in this lawsuit via its officer-director-stockholder, Ed Rachanski, who was not an attorney--but without any motions being made by any of the other parties in this civil action to bar this representation upon the ground that he was illegally practicing law in Wisconsin upon behalf of a foreign corporation.

On May 25, 1995 the trial court granted summary judgment to U.S. Fire Ins. dismissing all of Jadair's claims against it, as well as all of the cross claims by the other co-defendants against it, including those of Blueprint. Summary judgment was entered on July 18, 1995. There was only 45 days thereafter

for Blueprint to appeal therefrom.

B. Appellate Proceedings

Jadair filed its Notice of Appeal on July 15, 1995. Blueprint filed its Notice of Appeal on August 21, 1995. The former was signed by its regular attorney, Ross R. Kinney, then a partner at Quarles & Brady. The latter was signed by Ed Rachanski, *pro se*. (See App., tab C) Wisconsin had an absolute 45 day time limit for filing Notices of Appeal after the judgment was entered, where, as here, notice of its entry was given. Notices of Appeal filed thereafter are, under Wisconsin law, fatally late. On September 18, 1995, well after this 45 day time period had elapsed, U.S. Fire Ins. moved Court of Appeals II to dismiss both the Jadair appeal and the Blueprint appeal. This motion, insofar as it was to dismiss Jadair's appeal, was denied by Court of Appeals II. However, it dismissed Blueprint's appeal--not upon the ground that it was in an improper form or untimely--but solely because that one page sheet of paper had been signed by Ed Rachanski, rather than by an attorney. (See App., tab B) Seven days after the filing of the motion to dismiss Blueprint's appeal was interposed, attorney Ross R. Kinney appeared

specially in the appellate proceedings only, upon behalf of Blueprint. As to the merits of the summary judgment adjudications, the interests of Jadair and Blueprint were, and are, substantially identical and, accordingly, there was no fatal conflict-of-interest.

Blueprint and Jadair petitioned the Wisconsin Supreme Court to accept an appeal from Court of Appeals II's adverse decision dismissing Blueprint's appeal and this was accepted. After briefing and oral argument, the Wisconsin Supreme Court unanimously affirmed the dismissal of Blueprint's appeal on April 29, 1997--solely upon the ground that the one page Notice of Appeal had been signed by Ed Rachanski who was not, and is not, a lawyer. (See App., tab A) Extensive constitutional arguments had been advanced by Jadair and Blueprint to the Wisconsin Supreme Court in their initial and reply briefs. But the Wisconsin Supreme Court's perfunctory advertances to the Equal Protection of the Laws and Due Process constitutional issues, did *not* come to grips with any of the key considerations and did *not* attempt to discuss or deal with the extensive supportive case law relied upon by Jadair and Blueprint. Nor did it engage in the requisite constitution analysis mandated by this Court's decisions dealing with Due Process and Equal Protection issues.

(See App., tab A, pages 18a-19a)

Accordingly, 28 U.S.C. 2403(b) may be applicable.

REASONS FOR GRANTING THE PETITION

Introduction

The Wisconsin Supreme Court's Decision does *not* even advert to the constitutional consequences, if any, of a small family owned corporation's financial inability to retain and pay for an attorney within the 45 day appeal period--even though lack of money is certainly a critical factor that looms ever larger in civil actions during modern times in this country. Given the ever rising number of legal malpractice claims against attorneys, as well as the statutory provisions in the judicial systems of the states, as well as the Federal system, imposing "frivolousness" penalties, it can be very difficult to retain needed lawyers in civil actions. These factors can certainly be powerful deterrents to attorneys haphazardly agreeing to represent financially strapped family corporations that cannot afford to pay much money, if any, for the representation.

Yet the Wisconsin Supreme Court's controlling analysis, mirroring Court of Appeals II's *per se* rule, has *no* means by

which the appellate courts can even consider such critical factual considerations or determine whether they exist--even if the practical effect of the *per se* "must be signed by attorney" rule is to bar *access* to the appellate court system. There is simply a *per se* statutory and/or common law bar to any and all corporations obtaining "access" to the appellate system if their Notices of Appeal are *not* signed by an attorney and filed within the requisite 45 days window.

It is now time for this Court to evaluate and resolve--in the light of modern day realities-circumstances--the issues whether Due Process and/or Equal Protection of the Laws protect small family owned corporations from being, in effect, denied "access" to states' appellate court systems in civil actions--as they attempt to protect their Property (e.g. accumulated by the family over one or more generations) in the midst of expensive and complex *civil* lawsuits. When such small corporations simply do *not* have sufficient financial resources available to pay an attorney to represent it in an appeal by signing a Notice of Appeal within a very short time period, the practical effect of requiring an attorney to sign that document, is to bar "access" for want of money. This financial problem was exacerbated in this

case by the relatively short 45 day time period which Blueprint found itself in the midst of and without the benefit of any attorney's advice. It had to get and file a sheet of paper labeled "Notice of Appeal"--in order to avoid a statute of limitation type bar--within 45 days from the date of the July 18, 1995 summary judgment).

Extensive legal research discloses no published decisions in any court in this country that have grappled with these precise Due Process and Equal Protection constitutional issues involving "access" to appellate courts in the context of small corporations experiencing such severe financial constraints. In particular, legal research disclosed no judicial decisions resolving such issues in the light of the more recent decisions of this Court that have dealt with analogous constitutional issues involving the right to counsel (attorney), and analyzed and applied the Due Process and/or Equal Protection of the Laws guarantees in civil actions.

The bars in many states in this country, including Wisconsin, have been for years grappling with the question of how desperately needed lawyering services can somehow be provided to the lower middle class persons and businesses in this country, as they seek justice and righteousness in our court systems--but

simply cannot afford to pay for attorneys' service at their going rates. The problem is particularly acute where first class trial representation is needed in civil actions because important constitutionally protected Property rights-interests are at stake. Adverse results can be financially devastating to the persons and/or businesses at risk--including those which are *incorporated*--if they lose.

I. The Wisconsin Supreme Court's Absolute Fatally "Defective" Statutory-Common Law *Per Se* Rule Requiring all Corporations' Notices of Appeals to be Signed by an Attorney, is in Violation of the Due Process and/or the Equal Protection Guarantees of the Fourteenth Amendment to the United States Constitution

It has long been well-settled that the Fourteen Amendment to the United States Constitution, via its Due Process and Equal Protection of the Law guarantees, is applicable to, and imposes limits upon, state court systems' deprivations of litigants' "property" interests. *Cf. e.g.*, Craig v. Carson, 449 F. Supp. 385, 389-91, 395 (M.D. Flo. 1978) (must be "...fundamental

safeguards...real and present"; held Due Process mandates, *inter alia*, that "...there must be some legitimate governmental or public reason asserted for depriving an individual of his liberty or *property*." Craig at 390. Due Process guarantees procedurally that state court systems cannot infringe upon litigants' "property" interests via rules that are "arbitrary, capricious or without rational basis." *See e.g.*, Harrah Independent School District v. Martin, 440 U.S. 194, 99 S.Ct. 1062 (1979); Kaufman v. Board of Trustees, Community College, 552 F. Supp. 1143, 1153-6 (W.D. Ill. 1982) (held violated Due Process and Equal Protection); Pyeatte v. Bd. of Regents of University of Oklahoma, 102 F. Supp. 407, 411-3 (W.D. Okla. 1951) aff'd. per cur. 342 U.S. 936, ___ S.Ct. ___ (1952). So viewed, the Wisconsin Supreme Court's absolute rule that all corporations' one page Notices of Appeal must be signed by an attorney or adjudged fatally defective just because the litigating party is a corporation--even though that same sheet of paper would be legally okay if that party had been a human being--cannot pass muster.

The Due Process guarantee as applied to state courts' procedures mandates a "balancing" of three factors (1) the particular kind of private liberty or

property interest at stake, (2) the *risk* of a *wrongful* or *erroneous* deprivation of that interest, and (3) the public or governmental interest involved. *See e.g.* Craig, 449 F. Supp. at 391. The bottom line Due Process guarantee is that the procedural "safeguards" imposed by the states in their courts must be "meaningful and reasonable." *See e.g.*, Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313-4, 70 S.Ct. 652 (1950); Craig, 449 F. Supp. at 391. Yet the Wisconsin Supreme Court's *per se* rule has no such balancing and, moreover, its April, 1997 decision embracing that *per se* rule, did *not* engage in this analysis. Moreover, what is the overwhelming "public or governmental interest involved" which justifies closing the appellate doors to all corporations merely because the "legally magic" sheet of paper, the Notice of Appeal, was not *signed* by an attorney--even if a Wisconsin attorney would be representing the corporation thereafter as to all key functions (e.g. brief writing)?

The essence of the Equal Protection of the Law guarantee is that similarly situated "persons" *must* be treated the same unless "meaningful, socially relevant differences" justify the differences in treatment--i.e., equate with the "just distribution of benefits and burdens in society." The

classifications must be based upon "distinguishing characteristics which are relevant to the states' legitimate interests." Cook v. Babbitt, 819 F. Supp. 1, 11 (D.D.C. 1993). So judged, the Wisconsin Supreme Court's *per se* rule's line between *all* corporate "persons" and *all* human beings (natural "persons"), cannot pass muster. The substantive Due Process guarantee is virtually co-extensive with the Equal Protection of the Laws guarantee. *See e.g.*, Harrah, 440 U.S. at 194; Kaufman, 552 F. Supp. at 1153; Pyeatte, 102 F. Supp. at 415-6 (group-class subjected to the requirements cannot be arbitrarily selected and defined).

As early as Covington v. Sandford, 164 U.S. 578, 17 S.Ct.198 (1896) it was time to declare that "[i]t is now settled that *corporations* are *persons* within the meaning of the constitutional provisions forbidding the deprivation of property without due process of law, or, as well, a denial of the equal protection of the laws." Since Blueprint, as a "corporation," is nonetheless a "person," it was protected by the Due Process and Equal Protection of the Law guarantees. *See* also *e.g.*, Trapper Brown Constr. Co., Inc. v. Electromech, 358 F. Supp. 105, 106-7 (D.N.H. 1973); State v. Sowder, 826 S.W.2d 294, 926-8 (Tenn. Cr. App. 1991) ("...(a)ll forms of *property*..." are

entitled to such protection). Blueprint's corporate assets were, and are, such "property." See also e.g. First Nat. Bk. v. Bellotti, 435 U.S. 765, 780, 985 S.Ct. 1407 (1978) ("(i)t has been settled for almost a centry that corporations are persons within the meaning of the Fourteenth Amendement.").

Due Process guarantees *reasonable* access to all court systems. *See e.g.*, Hooks v. Wainright, 352 F. Supp. 163 (M.D. Fla. 1972), aff'd. 529 F.2d 161, (10 Cir. 1976); Silver v. Cormior, 529 F.2d 161 (10 Cir. 1976); Boling v. National Zinc Co., 435 F. Supp. 18, 20 (N.D. Okla. 1976). This encompasses Wisconsin's appellate court system! The constitutional impact and significance of financial requirements, which litigants could *not* afford to meet, were initially recognized in the criminal litigation arena under the "liberty" guarantee. However, these very same concerns are also applicable in the civil litigation arena via the constitutional "property" guarantees. The genesis decision which broke the ground was Griffin v. Illinois, 351 U.S. 12, 13-4, 76 S.Ct. 585 (1956) where it was held in a criminal case that the state rule requiring appellants to pay for trial transcripts violated the Equal Protection and Due Process guarantees by "thereby shut[ting] off [the] means of appellant review for

indigent defendants." But most of our country's citizens are *not* at risk in criminal cases; the more important concerns for the average hard working citizens who are the backbone of this country, is whether they will have enough available money to pay for attorneys fees when they engage in civil actions as they occur! Attorneys fees are much greater than fees for trial transcripts.

In Tucker v. City of Montgomery, 410 F. Supp. 494, 502 (M.D. Ala. 1976) it was held that the requirement of filing surety bonds in appeals from municipal "quasi-criminal" convictions violated the Equal Protection guarantee *as applied to* "indigents" because the erection of "financial barriers restricting the availability of appellate review for indigent individual defendants has no place in our heritage of equal justice under law." Amen! See also, *e.g.*, Burns v. Ohio, 360 U.S. 252, 257, 79 S.Ct. 1164 (1959) (appellant unable to pay docketing and filing fees for appeal from felony conviction, citing Griffin). Yet "access" to appellate courts is even more surely denied in civil actions by requiring *all* corporations to hire an attorney to sign the Notice of Appeal within 45 days, when "applied to" corporations that do *not* have the money available to do so!

In Boddie v. State of Connecticut,

401 U.S. 371, 372, 375, 91 S.Ct. 780 (1971) it was held that state litigation procedures requiring "payment of court fees and costs of service of process, that *restrict* their *access* to the courts in their effort to bring an action for divorce"--i.e. in civil, *not* criminal cases--just because of their "inability" to afford to pay them (because of indigency), were also unconstitutional. This same reasoning is also applicable to natural persons and to corporate persons that simply cannot afford to hire an attorney to represent them in given civil actions and accordingly, must choose to proceed *pro se*. Blueprint's cross claim legal rights against its insurance company, U.S. Fire Ins., are "property rights" protected by the Due Process and Equal Protection of the Laws guarantees--particularly since Jadair's claims against Blueprint are still legally viable.

Boddie concluded, citing Griffin:

> Just as a generally valid notice procedure may *fail to satisfy due process* because of the *circumstances* of the defendant, so too a *cost requirement*, valid on its face, may *offend due process* because it operates to *foreclose* a particular party's *opportunity*

> *to be heard.*
>
> ***
>
> In our opinion, *none* of these considerations is sufficient to *override* the *interest* of these plaintiff-appellants in having *access* to the *only avenue open* for dissolving their allegedly untenable marriages. Not only is there *no* necessary connection between a *litigant's assets* and the seriousness of his motives in bringing suit, but it is here beyond present dispute that appellants bring these actions in *good faith*. (401 U.S. at 381-2; emphasis added)

The Wisconsin Supreme Court's *per se* rule refuses to take any of these constitutionally key factual matters into account; it simply closes Wisconsin's appellate doors to Blueprint and to all other *pro se* corporations--regardless of their financial plights--just because the person signing the one page Notice of Appeal is *not* an attorney.

Justices Douglas and Brennan concurring in Boddie relied upon the Equal Protection guarantee, citing, *inter alia*, Griffin and Burns, (401 U.S. at

384-90):

> A state may *not* make its judicial processes available to some but *deny* them to others *simply because they cannot pay.* (401 U.S. at 390; emphasis added)

Yet U.S. Fire Ins. presented *no* evidence on this critical factual consideration in support of its motion to dismiss the Blueprint appeal. Moreover, it conceded during oral argument before the Wisconsin Supreme Court that it had sustained no "prejudice" because Ed Rachanski had signed Blueprint's Notice of Appeal *pro se*, rather than having an attorney sign it. So what is the overbalancing legitimate "public" interest which justifies closing "access" to Wisconsin's appellate court system to Blueprint's appeal?

Five years earlier, the Wisconsin Supreme Court in Piper v. Popp, 167 Wis. 2d 633, 637-9, 482 N.W.2d 353, 355-7 (1992) had grappled with some of these very same constitutional considerations in a civil lawsuit involving an "indigent" natural person, in the context of Due Process. The constitutional guarantees which it embraced in that decision, are at odds with its 1997 *per se* rule in this case, which does *not* even

consider the financial capabilities of the corporation *vis a vis* paying for an attorney in a particular lawsuit to sign the Notice of Appeal. The issue in Piper was whether an "indigent" defendant in a civil (tort) action "has a constitutional right to have the state appoint and pay for an attorney to represent him." The court engaged in a "weighing the elements in due process" analysis, rather than merely announcing a *per se* rule. (167 Wis.2d at 638) Yet in this case, it did not do so!

In this case, the Wisconsin Supreme Court's *per se* rule barred Blueprint from appearing *pro se* in this case--even for the limited and isolated purpose of signing and filing Blueprint's one page Notice of Appeal so as to effectuate its appeal within the short jurisdictional time period (i.e. 45 days). But the Wisconsin Supreme Court held in Piper:

> To answer this question, we begin with the *axiom* that before the state may deprive an individual of life, liberty *or property*, the state must accord the individual in a *meaningful opportunity* to be heard. In other words, *litigants must be given their day in court. Access* to the courts is an

> *essential ingredient* of the constitutional *guarantee of due process*. Whatever the precise status of the *right of access* to the courts, due process is satisfied "if the procedures provide an opportunity to be heard at a meaningful time and in a meaningful manner.
> (482 N.W.2d at 358; emphasis added)

The Wisconsin Supreme Court's *per se* rule is incompatible with this constitutional Due Process "property" analysis, as well as with other states' judicial decisions and with some Federal lower court decisions. Accordingly, this Court should clarify this important constitutional area!

"The right to file an *appeal* is a *property* interest which may *not* be revoked absent due process of law." Kertes Ent., Inc. v. Orange Village, 593 N.E.2d 306, 307-8 (Ohio App. 1990) (emphasized "no prejudice" to opposing party). See also e.g. Atkinson v. Grummon Ohio Corp., 523 N.E.2d 851 (Ohio 1988). The right to appeal is also protected by the Equal Protection guarantee. Lindsey v. Normet, 405 U.S. 56, 78-80, 92 S.Ct. 862 (1972) held, citing, *inter alia*, Griffin, that the state's double bond requirement--which is nowise as expensive as hiring an attorney

to sign a Notice of Appeal violated the Equal Protection guarantee because "arbitrary" and "irrational":

> ...When an *appeal is afforded*, however, it *cannot be granted to some* litigants and capriciously or arbitrarily *denied* to others without violating the Equal Protection Clause.
>
> ...The claim that the double-bond requirement operates to screen out frivolous appeals is *unpersuasive*, for it *not only bars* nonfrivolous appeals by those who are *unable* to post the bond but also allows meritless appeals by others who can afford the bond.
> (emphasis added)

Likewise, creating dividing lines between *pro se* appellants in an appellate system upon the basis of whether they are corporate "persons" or human beings (natural "persons"), and between corporations that can afford to hire an attorney to sign their Notices of Appeal and those that cannot, are subject to the same legal condemnation. It becomes even more arbitrary when the issues determining "access" to the appellate

system revolve around *who* signs a one sheet piece of paper labeled Notice of Appeal, whose *sole practical function* is to give "notice" to the winning party that the losing party is appealing that decision! It is hardly necessary to have an attorney sign that document; it is *not* a complex legal endeavor like an appellate brief.

In O'Day v. George Arakelian Farms, Inc., 536 F.2d 856, 585-60 (9 Cir. 1976) it was held that the double bond requirement violated the Equal Protection guarantee because "...not reasonably or rationally related to a *legitimate* governmental purpose and [it] constitutes an effective bar to appeal.":

> Lindsey also makes clear, however, that the requirement imposed must be rationally related to securing the *risk involved*. Legislative categories need not be drawn with "mathematical nicety" (Dandridge v. Williams, 397 U.S. 471, 485, 90 S.Ct. 1153, 25 L.Ed.2d 491 (1970), for classification necessarily involves approximation; but legislative classifications which are not only imprecise, but *lack rational relationship* to their avowed purpose, are

> invalid, United States Department of Agriculture v. Moreno, 413 U.S. 528, 538, 93 S.Ct. 2821, 37 L.Ed.2d 782 (1973)
>
> ...In any event, the amount of the double bond required in this case would be *beyond the reach of many litigants*.
>
> ...Thus, for this appellant, no less than for the appellants in Lindsey, "as a practical matter, appeal is *foreclosed*, no matter how meritorious [his] case may be." 405 U.S. at 79, 92 S.Ct. at 877.
> (536 F.2d at 860; emphasis added)

It pointed out that "(a) cost requirement valid on its face may offend the Constitution as applied to a particular case." (536 F.2d at 861) Yet the Wisconsin Supreme Court's *per se* rule leaves no room for appellate courts to sort out which corporations can, and which ones cannot, afford to pay attorneys in given appeals to represent them (e.g. by signing the Notice of Appeal).

A like decision was reached in Merchants Ass'n. v. Conger, 606 P.2d 125 (Mont. 1979) (held statutory appellate

requirement of filing a financial "undertaking" "double" the amount of the judgment, as a prerequisite to processing the appeal, was as *applied* to a natural person who could *not* afford to pay for it, a violation of Equal Protection). Likewise, a small family owned corporation is denied Equal Protection of the Law when the Wisconsin *per se* rule is "applied to" it, as a prerequisite to appeal adverse judgment, if it cannot afford to have an attorney to sign the Notice of Appeal. *See* also *e.g.*, Douglas v. California, 372 U.S. 353, 356-8, 83 S.Ct. 814 (1963) (held "invidious discrimination" in violation of Equal Protection because the "line" in criminal appeal cases "has been drawn between rich and poor" and "...the right to appeal does *not* comport with fair procedure" for the "indigent"; "when society acts to deprive one of its members of his life, liberty *or property*, it takes its most awesome steps; the indigent...has only the right to a *meaningless* ritual [because of lack of finances], while the rich man has a meaningful appeal"; Lane v. Brown, 372 U.S. 477, 480-5, 83 S.Ct. 768 (1963); (held governed by Griffin as violation of Equal Protection because appeal right in effect denied to appellants that "could [not] afford 'to pay for trial transcripts'"); Rinald v. Yeager, Warden, 384 U.S. 305, 308-11, ___

S.Ct. ___ (1966) (held Equal Protection violated since it requires "some rationality in the nature of the class signaled out...some relevance to the purpose for which the classification is made" and the statutory provisions did *not* apply that requirement "with an even hand").

These issues concerning "access" to state appellate court systems are generally governed by state statutes, state judicial rules and/or state common law principles. Historically, there has *generally* been in most states a "black" and "white" distinction between the absolute right of all natural persons to act as his or her own attorneys and the reverse side of that coin, barring all corporations from ever being able to act in any civil lawsuit under any circumstances via any non-attorney--even if that person happens to be via the sole owner, officer and director of a small financially impoverished family owned corporation that has *no money* to pay an attorney to represent the corporation and accordingly, could *not* persuade an attorney to represent it in a civil action. See e.g. Annotation, Propriety and Effect of Corporation's Appearance Pro Se Through Agent Who is Not Attorney, 8 A.L.R. 5th 653.

This case does *not* deal with broad brush constitutional issues or with

claimed absolute constitutional rights of *all* corporations *vis a vis* all aspects of civil court proceedings. This Court would be resolving much narrower issues triggered by the particular facts in this case and the *per se* rule being applied in this context. In the aforesaid Annotation, the Iowa Supreme Court in Hawkeye Bank, the lead case, pointed out that "(w)e recognize that due process requires the court system to be *accessible* to those who are aggrieved." This constitutional right was also recognized by the Supreme Court of Hawaii in Oahu Plumbing:

> "Due Process of law requires only that the court system be *open* to use by those aggrieved..."

But when a corporation is required to have its Notice of Appeal signed by an attorney who it cannot afford to pay, and hence cannot hire to represent it, there is no meaningful "access" to the appellate system and the courts are not really "open" to such a corporation.

II. The Constitutional Questions Presented are Important to all Financially Disadvantaged Corporations in this Country that Ever became Involved in

Civil Litigation and there is a Lack of Consistency of the State and Lower Federal Due Process and Equal Protection Decisions of this Court

Accordingly, there is a need *at this time* to clarify what these constitutional guarantees do and do not mean when applied to financially troubled small corporations in civil actions.

III. It is only Rarely that a Financially Disadvantaged Corporation is able to get these Important Constitutional Issues Before an Appellate Court for Resolution Because, by Definition, There is an Inherent Lack of Available Money. This Case is a Classic Example of what can and does Occur, and it Poses Several Important Constitutional Issues with Razor Sharp Clarity in a Factually Unique Appellate Setting

The genius of our judicial system, including the clarification and establishment of constitutional rights, is in the deciding of concrete cases. This opportunity for this Court to clarify these important constitutional

issues in a civil--rather than criminal--litigation setting may *not* come again for many years!

Conclusion

This is a first class opportunity for this Court to grapple with, and then resolve, constitutional issues which are important to the many common, average, hard working citizens of this country who have their businesses organized as *corporations*, but find at time they do *not* have enough money available to hire one of the seemingly countless attorneys who abound in this country.

Respectfully submitted this 11th day of July, 1997.

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